

Base costs means all costs that are specifically related to a rail property and/or facility, except those costs which could be avoided if the minority user(s) service(s) were not present.

Base period means a minimum of three months and a maximum of twelve months for which the latest traffic, revenue and cost data are available.

Common costs means charges for rail facilities, properties and services in the designated area which are not solely for the benefit of a particular user. Such charges shall be included in the proper account.

Commuter service means the specific service for which the subsidizer has offered or agreed to make continuation payments.

Conrail means the Consolidated Rail Corporation.

Designated area means a portion of the rail facilities such as track segments, buildings and yards, for which costs are collected and apportioned between commuter and other services. A designated area may extend beyond or outside the commuter service area.

Dominant user means the person, railroad, State, or local or regional transportation authority who is the owner of a rail property and/or facility.

Facilities Utilization Plan means a document identifying and itemizing the road and equipment properties used in providing commuter passenger service.

Form R-1 means the railroad's annual report filed with the ICC in accordance with the requirements of section 20 of the Interstate Commerce Act.

ICC means Interstate Commerce Commission.

Manpower Utilization Plan means a document identifying the labor forces used in providing commuter passenger service.

Minority user means a user other than the dominant user of a rail property and/or facility on an incremental (use) basis.

4R Act means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31 *et seq.*).

Railroad means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), including Conrail and Amtrak.

RSPO means the Rail Services Planning Office of the ICC.

Secretary means the Secretary of Transportation or his designated representative.

Standards means 49 CFR part 1157 Standards for Determining Commuter Rail Service Continuation Subsidies.

Subsidizer means a State or a local or regional transportation authority which offers to make or makes a payment to continue commuter rail service pursuant to sections 304(c) and 304(e) of the 3R Act as amended.

Subsidy period means the term for which a subsidy agreement has been negotiated and is in operation.

XX means that where this notation precedes the last four digits of an account number (e.g. XX-16-02), all accounts with identical last four digits (e.g. 11-16-02, 21-16-02, 41-16-02 and 61-16-02) are to be included.

[44 FR 16411, Mar. 19, 1979, as amended at 45 FR 45, Jan. 2, 1980. Redesignated at 47 FR 49582, Nov. 1, 1982]

§ 1157.2 Purpose and scope.

(a) Section 304(e)(1), as amended, of the 3R Act requires Conrail (or a profitable railroad) to provide commuter rail service for a period of 180 days commencing April 1, 1976, on all rail properties over which a railroad in reorganization in the Northeast and Midwest Region, or a person leased, operated, or controlled by such a railroad, was providing service as of that date regardless of whether or not the properties were designated in the Final System Plan of the United States Railway Association as rail properties over which rail service is required to be operated.

(b) Section 304(c)(2)(A) and section 304(e)(4) of the 3R Act, as amended, provide that no commuter rail service may be discontinued, and no rail properties may be abandoned, if a subsidizer offers financial assistance in the form of a rail service continuation payment which is designed to cover the difference between the avoidable costs of providing commuter rail service on the rail properties and the revenues attributable to such properties, together with a reasonable return on the value of the properties.

(c) Section 205(d)(6) of the 3R Act, as amended, authorizes RSPO to determine and publish Standards for defining (1) the “revenue attributable to the rail properties”, (2) the “avoidable cost of providing service”, and (3) a “reasonable return on value”, as those phrases are used in section 304 of the 3R Act, as amended.

(d) Section 205(d)(5) of the 3R Act, as amended, directs RSPO to determine and publish Standards for the computation of subsidies for commuter rail service (except passenger service compensation disputes subject to the jurisdiction of the ICC) which are consistent with the compensation principles described in the Final System Plan and which avoid cross subsidization among commuter, intercity, and freight rail services.

(e) These regulations set forth a method for establishing an estimated subsidy payment, which will enable a prospective subsidizer to formulate a subsidy offer within the context of section 304 of the 3R Act, as amended, and provide a basis for subsidy payment pending the negotiation of a subsidy agreement. When an agreement is concluded, subsequent payments shall be based on the negotiated subsidy. The final payment shall be adjusted to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in the subsidy period.

(f) Section 304(e)(4)(C) of the 3R Act, as amended, provides that the Commuter Standards published as 49 CFR part 1157, Standards For Determining Commuter Rail Service Continuation Subsidies under section 205(d)(5)(A) and (6) of the 3R Act, as amended, shall apply to rail passenger service provided under an agreement or lease pursuant to sections 303(b)(2) or 304(c)(2)(B) of the 3R Act, as amended, when an offer is made for the continuation of rail passenger service beyond the period required by such agreement or lease.

§ 1157.3 Subsidy agreement.

(a) *Notice of Intention.* A prospective subsidizer shall notify the railroad of its intention to offer financial assistance for the continuation of commuter service no later than 40 days before the

offer is to be tendered. The Notice shall specify:

(1) All modifications in the fares to be charged and in the existing level of service, including changes in routes, schedules, train seating capacity, performance standards, equipment units, and such other dimensions of service as the subsidizer may specify;

(2) The length of the subsidy period; and

(3) The name and address of the prospective subsidizer.

A copy of the Notice shall be served concurrently on RSPO and the Secretary.

(b) *Subsidy Estimate.* The railroad shall compute a subsidy estimate predicated on the information contained in the Notice and the revenues attributable, avoidable costs of providing service, and reasonable return on value for the based period in accordance with the methodology prescribed in §§ 1157.6 through 1157.9 and in the format specified in appendix I to this part. The estimate shall be adjusted as necessary to allow for any actual or projected variations in service, e.g. seasonal fluctuations in traffic or extraordinary events affecting service levels. The bases of any adjustments shall be stated with particularity. The railroad’s estimate and the general terms it proposes for an agreement shall be served on the prospective subsidizer (with copies to RSPO and the Secretary) as soon as possible but not later than 30 days after the Notice is received.

(c) *Offer of Financial Assistance.* The prospective subsidizer must formulate an offer of subsidy predicated on the railroad’s estimate, but may propose modifications which are consistent with these Standards. Subsidy offers must be served on the railroad (with copies to RSPO and the Secretary) not less than 60 days before the end of the subsidy period. The offer shall contain:

(1) A subsidy estimate in the form prescribed in Appendix I to this part;

(2) A resolution, authorization or other evidence that the prospective subsidizer has, or within a reasonable time will have, the authority to execute and fulfill an agreement to subsidize the service;